

This section does not declare that a failure to comply literally with the form of bond shall avoid the bond. Substance and not form controls. Bond held to be in substantial compliance with this section. What is sufficient proof of the attestation of two judges of the orphans' court. The failure of such judges to attest the bond does not affect its validity. *Young v. State*, 7 G. & J. 259.

A sheriff is not qualified to act, nor bound to discharge the duties of his office, simply by signing a bond and having it signed by his securities without its being approved. The bond is only effectual from the date of its approval. The sureties on a sheriff's bond are only liable for the acts of a legally constituted sheriff. *Bruce v. State*, 11 G. & J. 386. And see *Broome v. United States*, 15 How. 156; *Milburn v. State*, 1 Md. 20, and note (c).

That sheriff's bond which was in force at the time the default took place, must be sued. *State v. Turner*, 8 G. & J. 126. See also, *Heultt v. State*, 6 H. & J. 97.

The bond of a deputy sheriff is not liable for the collection of state and county taxes, though taxes be mentioned in the condition of the bond. *Amos v. Johnson*, 3 H. & McH. 216.

Where a creditor issues execution and the sheriff collects the money, but the surety of the debtor in ignorance of the fact that the sheriff has collected it, pays the creditor, this operates as an equitable assignment to the surety of the creditor's claim against the sheriff. *Merryman v. State*, 5 H. & J. 426.

As to whether a judgment against the principal is admissible in evidence in a suit against the surety, see *Beall v. Beck*, 3 H. & McH. 242, and note (a).

For a rejoinder, in a suit on a sheriff's bond for returning a writ of attachment so negligently that it was quashed, held bad, see *Proprietary v. Wright*, 1 H. & McH. 49.

For cases apparently now inapplicable to this section by reason of changes in the law, see *State v. Baden*, 11 Md. 317; *State v. Lawson*, 2 Gill, 62.

Cited but not construed in *Ringgold's case*, 1 Bl. 25.

As to a sheriff's surety having a trustee appointed to complete the sheriff's collections, and as to an injunction and receiver in such cases, see art. 90, sec. 9, *et seq.*

See art. 20, sec. 2 and notes.

1904, art. 87, sec. 3. 1888, art. 87, sec. 3. 1860, art. 88, sec. 3. 1794, ch. 54, sec. 8.

3. He shall give such bond in each year of his sheriffalty before the first day of January in each year; and the bond shall be recorded by the clerk administering the oath of office.

A plea alleging that a bond was not executed within the prescribed time as the bond of the sheriff first returned to the executive as duly elected, is bad unless it further alleges that the bond was not legally executed and attested as the bond of the second so returned. *State v. Harrison*, 9 G. & J. 18.

See notes to sec. 2.

*Ibid.* sec. 4. 1888, art. 87, sec. 4. 1860, art. 88, sec. 4. 1794, ch. 54, sec. 8. 1867, ch. 314.

4. If any sheriff in office prior to the first day of any January next preceding shall fail to give and offer for record the bond required in the preceding section within ninety days after the said first day of January, it shall be the duty of the clerks of the circuit courts for the respective counties or of the clerk of the superior court of Baltimore city, as the case may be, to give notice forthwith of such failure to the governor of the State, whose duty it shall be at once to require the attorney general to institute the proper proceedings to vacate the office of said sheriff and upon said vacation to appoint a successor until the